IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 73 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MOIZ DAUDBHAI H

Versus

NARANBHAI B PATEL & 5

Appearance:

MR SURESH M SHAH for Petitioner

NOTICE SERVED for Respondent No. 1

MR JAYANT PATEL for Respondent No. 2

RULE SERVED for Respondent No. 3, 4, 5, 6

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 12/01/2001

ORAL JUDGEMENT

#. The petitioner herein is the original plaintiff of Civil Suit No.365/94 which is pending in the court of

Civil Judge (Junior Division), Morbi. It is the case of the plaintiff-petitioner that he instituted the said suit for possession of the shop and its site, over which the plaintiff was doing business. It is his say that he was doing business in partnership with respondents 4 and 6 herein till 30.9.1994. He was having lock and key of the premises which was ultimately demolished by defendants 1, 2 and 3 at midnight of 30th September, 1994. It is also his case that he has filed complaint against defendants 1, 2 and 3. Ultimately, the present suit is filed for a permanent injunction and declaration. The plaintiff has also asked for possession of the suit shop. He has also prayed in the suit that defendants 1, 2 and 3 may be restrained from making any construction in the aforesaid suit premises. In the said suit, an application Exh.5 was given for interim injunction restraining the defendants from making any construction over the suit shop and, to hand over the same to the plaintiff. The learned trial Judge, initially, granted status quo and ultimately after hearing both the sides, vacated the same.

#. The aforesaid order was challenged further by way of appeal before the District Court which was registered as Civil Misc. Appeal No.50/94. The aforesaid appeal was also dismissed by the Assistant Judge, Morbi by his order dated 5.1.1995.

#. The unsuccessful plaintiff - present petitioner carried the matter before this court by preferring this revision application.

#. This court at the time of admitting the matter, passed the order of status quo. Thereafter, the matter has reached for final hearing today.

#. I have gone through the order of the trial court as well as of the appellate court.

#. Both the courts have found that there is no prima facie case in favour of the plaintiff. It has been found by the appellate court that the plaintiff has got no tenancy rights over the suit shop and that the tenancy rights are restricted only in favour of the deceased-Taiyabali Mullaali and after his death the defendant No.4 had tenancy rights over the suit shop. Considering the partnership deed, the appellate court has come to the conclusion that, the plaintiff has got no legal possession over the suit shop. The appellate court also found that the possession was not taken from the plaintiff and in that view of the matter the appellate

court came to the conclusion that there was no question of granting mandatory orders of restoring the possession in favour of the plaintiff. In that view of the matter, the appeal was dismissed.

#. So far as revisional powers of this court are concerned, the same are very limited and this court is not expected to appreciate the evidence on record while deciding the revision application under section 115 of the Civil Procedure Code. Unless there is jurisdictional error, it is not possible for this court to revise the order passed by the appellate court. However, looking to the facts and circumstances of the case and especially when the status quo is prevailing since long, I am of the opinion that without expressing any opinion on merits one way or other, it will be just and proper to direct the trial court to dispose of the suit at the earliest, at any rate, within a period of six months from today. During the pendency of the suit, if any construction is made by defendants nos. 1, 2 and 3, the same will be subject to the final result of the suit. However, during the pendency of the suit, defendants nos. 1, 2 and 3 are directed not to transfer, alienate or deal with the suit property in any manner except that it will be open for them to put up construction, if they so desire. Ultimately, if the suit of the plaintiff is decreed, the plaintiff will be entitled to get restoration of possession and even if the premises is constructed, it will not be a ground, which can be considered against him. In short, if any construction is put up, the same will be subject to the result of the suit. It is also clarified that defendants nos.1, 2 and 3 will not claim any equity on the basis of such construction if the same is made during the pendency of the suit and ultimately the defendants nos. 1, 2 and 3 will abide by the final order in the suit.

#. As stated earlier, defendants nos. 1, 2 and 3 will not claim any equity or will not put up any defence to the effect that, now, they have constructed the premises in question. Ultimately, if the decree is passed in favour of the plaintiff without raising any defence that they have put up such construction, defendants nos. 1, 2 and 3 will abide by the decree, subject to of course their right of appeal in case the suit is decided against them. During the pendency of the suit, they are restrained from transferring, alienating or dealing with the property or creating any interest in favour of any third party in the suit property in any manner. The suit is to be disposed of at the earliest, at any rate, on or before 31st July, 2001. Writ of this order to be sent to

the trial court forthwith for compliance.

#. Subject to the above directions, Revision Application is dismissed. Rule is discharged with no order as to costs.

(P.B.Majmudar,J)
(pathan)